

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting a simultaneously filed oil and gas lease application for failure to timely submit the first year's rental and signed lease forms. M 58127.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rentals

Where an individual whose application has been drawn with first priority for an oil and gas lease in the simultaneous leasing program fails to submit the signed lease offers or the advance rentals within 30 days of notice by BLM, the application must be rejected, regardless of any justification which the applicant may provide for his failure to timely transmit the documents.

APPEARANCES: F. Miles Ezell, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

F. Miles Ezell, Sr., has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated August 30, 1983, which rejected his simultaneously filed oil and gas lease application (serialized as M 58127) which had been drawn with first priority for parcel No. 124 during the March 1983 filing period.

By notice dated June 29, 1983, BLM informed appellant that his application had obtained priority for the parcel and transmitted lease forms for his signature. Appellant was advised by this notice that the signed lease forms, together with payment of the advanced annual rental in the amount of \$ 1,040, was due in the Montana State Office within 30 days of appellant's receipt of the notice. This notice was delivered to appellant's address of record on July 8, 1983. Having received neither the lease forms nor the first year's rental within the 30-day period, BLM rejected appellant's application on August 30, 1983, and this appeal followed.

In his statement of reasons in support of the appeal, appellant does not deny that he failed to transmit the required forms and payment within the 30 days afforded by the notice. Rather, he explains that his failure to timely submit the documents resulted from medical problems for which he was being treated in a hospital over a period of 2 or more weeks. He notes that he went to his office <sup>1/</sup> on July 15, 1983, and signed the lease forms. He admits, however, that he failed to make out the remittance at that time. The following morning he was readmitted to the hospital and, he suggests, he was rather heavily medicated. He argues that he had assumed he had made out the check and transmitted it and the lease forms, until he received the BLM decision rejecting his application. He requests that the Board excuse the error on his part, as it was occasioned by illness.

[1] The regulation then in effect, 43 CFR 3112.4-1(a) (1982), <sup>2/</sup> required that "[t]he executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice." It was further provided that "[t]he application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title." 43 CFR 3112.6-1(d) (1982). <sup>3/</sup>

These or similar regulations have been in effect for years within the Department. They have been consistently interpreted as requiring rejection of any lease application or offer where the rental payment or signed lease forms have not been timely returned to BLM. See, e.g., Eagle Basin Partnership, 76 IBLA 241 (1983); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). This consistent course of adjudication was remarked upon by the U.S. Court of Appeals for the Tenth Circuit in Dawson v. Andrus, 612 F.2d 1280, 1283 (1980), which affirmed rejection of a lease offer for failure to timely pay the advance rental. As all of these cases make clear, the Board has no authority to waive the failure to timely submit the advance rental and signed lease forms regardless of any justification for this failure that an applicant might present.

The Department recognizes that, in an individual case, the result may seem harsh, but it is, nevertheless, necessary "to expeditious administration of the Bureau's business." Jack Koegel, 30 IBLA 143, 144 (1977). While we may sympathize with appellant, to the extent that illness may have prevented his compliance with the regulations, that does not warrant our ignoring the mandatory nature of the regulations and excusing his failure to comply.

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<sup>1/</sup> Appellant apparently used his business address rather than his home address on the application form.  
<sup>2/</sup> Since the commencement of this appeal, the oil and gas leasing regulations have been the subject of numerous changes, though the substance of the regulation has remained constant. It is now found at 43 CFR 3112.6-1(a).

<sup>3/</sup> This regulation has been essentially repromulgated as 43 CFR 3112.5-1(c).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski

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Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Will A. Irwin  
Administrative Judge.

